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DECISION

**THE COMPTROLLER GENERAL
OF THE UNITED STATES
WASHINGTON, D. C. 20548**

FILE: B-194370

DATE: January 23, 1980

MATTER OF: Livingston Lennon ^{[Request for} Backpay ^{at} Higher Grade _{Duties]}

DIGEST: IRS GS-12 employee was detailed and subsequently reassigned without promotion to investigative work in the Economic Stabilization Program from 1971 to 1973. He contends he served as supervisor of sizable group including GS-13's for approximately 16 months and seeks backpay at GS-13 level for that period. Claim must be denied under (1) Turner-Caldwell since he was not detailed to position classified in higher grade, and (2) United States v. Testan which holds that there is no entitlement to backpay for period of wrongful classification.

Mr. Livingston Lennon has requested further consideration of his claim for backpay based on his contention that he performed duties of a higher grade than the grade of the position to which he was appointed for an extended period of time.

AGC 00004

Mr. Lennon, a Revenue Officer employed by the Internal Revenue Service (IRS), grade GS-12, was detailed and subsequently temporarily reassigned without promotion to the Economic Stabilization Program to perform investigative duties from 1971 to 1973. He contends that for approximately 16 months of this period he served as the supervisor of a sizable group including some employees in grade GS-13, and he claims backpay at the grade GS-13 level for this service. In support of his contention he has submitted letters from the Civil Service Commission (CSC), and his union indicating that he did perform supervisory duties.

AGC 000013

The IRS informs us that the Economic Stabilization Program was a crash program, hastily instituted without complete foreknowledge of the workload or the demands. Because of these uncertainties, caution was used in establishing positions and effecting promotions. The Civil Service Commission granted special authority to detail employees for the duration of the Program without prior approval and many employees were detailed to unclassified duties commensurate with their qualifications. The agency can find no records which indicate that Mr. Lennon performed the duties of a position classified in grade GS-13.

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Consequently, both IRS and our Claims Division denied Mr. Lennon's claim on the ground that he was not detailed to a position classified in higher grade and, therefore, was not entitled to a retroactive temporary promotion and backpay under Turner-Caldwell, 55 Comp. Gen. 539 (1975), affirmed 56 id. 427 (1977). That decision holds that if an employee is detailed for a period in excess of 120 days without prior Civil Service Commission approval, to a position classified in a higher grade than his appointed grade, he is entitled to a temporary retroactive promotion and backpay for such period, provided he meets all qualifications and other requirements for such a promotion.

We agree with the conclusion reached by IRS and the Claims Division, both for the reason stated and because prior CSC approval for extended details had been obtained. However, it appears on this appeal that Mr. Lennon is not claiming to have been detailed to a classified position in higher grade - but rather that his position was misclassified or that his agency failed to properly classify his new position and that others performing duties similar to his were classified in grade GS-13. In his letter dated January 9, 1979, Mr. Lennon states that "there was no 'official assignment,' pending description and classification of new position* * *." However, he asserts that other employees in identical positions were promoted to higher grades. In such circumstances he claims retroactive pay for services rendered in the Economic Stabilization Program in a lower grade position which should have been upgraded.

Mr. Lennon's claim on the latter theory must be disallowed under the well established principle that an employee is entitled only to the compensation of the position to which he or she is officially appointed without regard to the duties performed. This principle was reaffirmed in the case of United States v. Testan, 424 U.S. 392 (1976), where the Supreme Court of the United States held that neither the Classification Act (5 U.S.C. §§ 5105-5115) nor the Back Pay Act (5 U.S.C. § 5596) creates any substantive right to backpay based on a period of wrongful classification.

For the foregoing reasons, the settlement action of the Claims Division denying Mr. Lennon's claim for backpay is sustained.


For the Comptroller General
of the United States